IN THE

Supreme Court of the United States

October Term, 1954

No.

ROUBEN GOLDMAN and SYLVIA GOLDMAN,
Petitioners,

v.

JOHN M. FOGARTY,
Guardian ad Litem.

PETITION FOR A WRIT OF CERTIORARI TO THE PROBATE COURT, ESSEX COUNTY, COMMONWEALTH OF MASSACHUSETTS

The petitioners pray that a writ of certiorari issue to review a decree of the Probate Court of Essex County in the Commonwealth of Massachusetts (R. 3) dismissing the petition herein, which decree was affirmed by a decision of the Supreme Judicial Court of Massachusetts (Appendix, Part B).

Opinion Below

The Probate Court rendered no formal opinion but did issue Findings of Fact, which are unreported but are set forth in full herein (Appendix, Part A). The opinion of the Supreme Judicial Court is not yet officially reported but has been unofficially reported at 121 N. E. 2d 843, and is set forth in full herein as Appendix, Part B. The Supreme Judicial Court also issued a rescript which is set forth in full herein as Appendix, Part C.

Jurisdiction

The decision of the Supreme Judicial Court was entered and its rescript issued on September 27, 1954. The jurisdiction of this Court rests on 28 U. S. C. Section 1257 (3).

Questions Presented

The following questions are presented:

1) Whether a decree of a state court ascribing a particular religious faith to a child and denying a petition for adoption by a couple because their religious faith is different, where such adoption is consented to by the natural parent of the child and would further the temporal welfare of the child, constitutes a denial of the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution, and whether a state statute pursuant whereto the said petition was denied is invalid as being repugnant to the provision of the Four-

teenth Amendment to the Federal Constitution prohibiting a state from denying to any person within its jurisdiction the equal protection of the laws.

2) Whether such a decree and statute are repugnant to the provision of the Fourteenth Amendment to the Federal Constitution prohibiting a state from depriving any person of liberty without due process of law.

3) Whether such a decree and statute are repugnant to the First Amendment to the Federal Constitution as made applicable to the states by the Fourteenth Amendment in that they constitute a law respecting an establishment of religion.

4) Whether such a decree and such statute are repugnant to the First Amendment to the Federal Constitution as made applicable to the states by the Fourteenth Amendment in that they constitute a law prohibiting the free exercise of religion.

Constitutional and Statutory Provisions Involved

The pertinent provisions of the United States Constitution and the Massachusetts statute are set forth herein in the Appendix, Part D.

Statement of the Facts

This case involves the denial by the Probate Court of Essex County in the State of Massachusetts of two companion petitions by Rouben Goldman and Sylvia Goldman,

husband and wife, petitioners herein, for the adoption of male and female twins called Wanda Rita Dome and Bruce Wilford Dome, minor illegitimate children of Pearl L. Dome. The Probate Court ruled that the petition could not be approved because the Massachusetts statute, G. L. (Ter. Ed.) c. 210, Section 5A, prohibits adoption by a couple of one religious faith of a child of a different religious faith. The Probate Court held that the fact that the mother of the twins consented to the adoption with full knowledge of the difference in religion, and the fact that the temporal welfare of the children would be furthered by the adoption were irrelevant. The objection to the adoption was asserted by a guardian ad litem who was appointed by the Probate Court on its own motion and who asserted the objection solely because of the factor of the religious diversity. The Supreme Judicial Court of Massachusetts affirmed the action of the Probate Court.

The Manner in Which the Federal Questions Are Raised

The Federal questions raised by this case were presented to the Supreme Judicial Court of Massachusetts in the petitioners' brief before that court (pp. 20-28) and in the brief *amicus curiae* presented in behalf of the American Jewish Congress to the Supreme Judicial Court of Massachusetts (pp. 11-25). In these briefs it was argued fully that the decree of the Probate Court violated the Fourteenth Amendment to the Federal Constitution and the First Amendment as made applicable to the states by the Fourteenth. The contention of unconstitutionality was again asserted on oral argument before the Supreme Judi-

cial Court of Massachusetts. The Supreme Judicial Court in affirming the decree of the Probate Court considered the Federal issues raised in the briefs and argument and overruled them, holding that the decree of the Probate Court and the statute pursuant whereto it was rendered did not violate any provision of the Federal Constitution.

Reasons for Issuance of the Writ

We submit that the Supreme Judicial Court decided substantial questions regarding the Federal Constitution in a manner not in accord with applicable decisions of this Court. We urge (1) that the questions are of substantial and general importance, and (2) that they have been decided erroneously by the court below.

1. The decision below raises Federal questions of substance and general importance.

The present case represents the first instance in which the constitutionality of a statute prohibiting adoption across religious lines has been squarely put in issue and upheld. Language similar to that contained in the Massachusetts statute has been considered by the highest courts of a number of states, but in all cases except one (*Matter of Santos,* 278 App. Div. 373, 105 N. Y. S. 2d 716, appeal dismissed 304 N. Y. 483) the language was considered advisory or permissive only, the court in some cases expressing the opinion that if the language were to be given mandatory effect there would be grave doubts as to its constitutionality. (*State ex rel. Baker* v. *Bird,* 253 Mo. 569, 162 S. W. 119; *Describes* v. *Wilmer,* 69 Ala. 25; *Jones*

v. *Bowman,* 13 Wyo. 79, 77 Pac. 439). The Supreme Judicial Court of Massachusetts itself in two prior cases had ruled that the statutory language was permissive rather than mandatory. (*Purinton* v. *Jamrock,* 195 Mass. 187, 80 N. E. 802; *Petition of Gally,* 329 Mass. 143, 107 N. E. 2d 21). In the present case the Supreme Judicial Court of Massachusetts in effect overruled these two prior decisions and, following the decision of the New York court, ruled that the statutory language was for all practical purposes mandatory. It also ruled that so interpreted the statute violated no constituional prohibition.

At least a dozen other states have provisions in their statutes governing adoption similar to that involved in the present case. (See Statutory Appendix to Note, Religion as a Factor in Adoption, Guardianship and Custody, 54 Col. L. Rev. 377, 396ff.) It is likely that other states will seek enactment of similar statutes. (See Note, Religion as a Factor in Adoption, Guardianship and Custody, 54 Col. L. Rev. 377; Note, Religious Factors in Adoption, 28 Ind. L. J. 401; 23 A. L. R. 2d 701; Kahn, A Court for Children, pp. 108-113, 300; Gellhorn, Children and Families in the Courts of New York City, pp. 263-264.)

2. The Supreme Judicial Court decided the Federal questions in a way not in accord with the applicable decisions of this Court.

A. The Massachusetts Supreme Judicial Court determined that the twins were of the Catholic faith because their mother was of that faith. We contend that under the constitutional prohibitions of laws respecting an establishment of religion and prohibiting its free exercise the

Massachusetts court had no competence to determine that the mother was a Catholic. *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94; *Watson* v. *Jones,* 13 Wall. 679; *People ex rel. McCollum* v. *Board of Education,* 333 U. S. 203. This is particularly so under the facts of the present case which show that the mother's assumed adherence to the Catholic faith was negated by her actions, *e.g.* obtaining a civil divorce, cohabiting thereafter with another man, not causing the twins to be baptized and consenting to their being brought up in the Jewish faith.

B. The Massachusetts court found that since the mother's religion was Catholic, the religion of the twins was likewise Catholic by virtue of the statutory provision that the religion of a child shall, in case of dispute, be deemed to be that of its mother. We contend that a law which imposes upon children a particular religion and does so in disregard of the intent or wishes of all persons bearing any relevant legal relationship to the child is a law respecting an establishment of religion since it constitutes the imposition of a religious status by political authority.

C. We contend that a law which denies the benefit of the adoption machinery merely because of religious diversity between the adoptive parents and the child is a denial of the equal protection of the laws since it effects discrimination without any reasonable relation to some purpose within the competency of the state. *Pierce* v. *Society of Sisters,* 268 U. S. 510; *People ex rel. Everson* v. *Board of Education,* 330 U. S. 1; *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Sipuel* v. *Oklahoma,* 332 U. S. 631; *Sweatt* v. *Painter,* 339 U. S. 629; *Truax* v. *Corrigan,*

257 U. S. 312; *Cochran* v. *Kansas,* 316 U. S. 255; *Hirabayashi* v. *United States,* 320 U. S. 81.

D. We contend that a law which interferes with the upbringing of a child in a religion other than that of its origin or of its mother's origin, where such upbringing is willed or consented to by all persons having any relevant legal relationship to that child, is a law respecting an establishment of religion in that it constitutes a forbidden state aid to the church whose claim of sovereignty over the child is thus being accorded legal sanction. (See *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94; *Burstyn Inc.* v. *Wilson,* 343 U. S. 495.)

E. We contend further that such a statute constitutes a deprivation of liberty without due process of law both by the self-operating effect of the Fourteenth Amendment and through its application to the states of the First Amendment. *Pierce* v. *Society of Sisters,* 268 U. S. 510; *Meyer* v. *Nebraska,* 262 U. S. 390; *Cantwell* v. *Connecticut,* 370 U. S. 296; *United States* v. *Ballard,* 322 U. S. 78; *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624.

CONCLUSION

For the reasons above stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

LEO PFEFFER
Counsel for Petitioners

December 22, 1954.

APPENDIX

A. FINDINGS OF FACT OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS

PROBATE COURT

ESSEX, SS. PROBATE COURT

ROUBEN GOLDMAN, *et al.*
Appellants

vs.

JOHN M. FOGARTY, Esq.
Guardian ad Litem
Appellee

In Re WANDA DOME
and Companion Case
In Re BRUCE DOME

These petitions for the adoption of Wanda Dome and a companion petition for adoption of her twin brother by the same petitioners were heard together, and the children are hereafter referred to as twins.

The petitioners are husband and wife, having been married in Brookline, Massachusetts on December 3, 1944.

The male petitioner was born in Leeds, England, May 28, 1910, came to this country when twelve years of age, and became a citizen March 29, 1943. He attended high school for two years; he has, for twenty-five years, been

the proprietor of a clothing and haberdashery store now located at 9 Cambridge Street in Boston, in the County of Suffolk, and draws therefrom a net annual salary of Five thousand dollars.

The female petitioner is thirty-nine years of age and was born in Somerville, Massachusetts; she graduated from high school and attended a private school for one year thereafter, and is in good health. She does most of the work about the house including the care of the twins.

At the time the twins were turned over to the petitioners, the petitioners occupied four rooms in a house at 101 Ocean Street, in Lynn, in the County of Essex, but in March 1953 they moved into a seven room cottage house on Pickwick Road in Marblehead, in said County of Essex, with four rooms on the first floor and three bedrooms on the second. The house has been completely renovated, is thoroughly modern, has a large yard connected thereto, and is located in an excellent neighborhood in the Town of Marblehead.

The house, owned jointly by the petitioners, is valued at $19,000.00. The couple have an automobile and life insurance totalling $10,000.00.

I find the petitioners are well equipped financially and physically to bring up the twins.

The mother of the twins, an American of French extraction, is 31 years of age, and lives in Manchester in the State of New Hampshire. She married on August 19, 1940, and of this marriage twins were born on May 3, 1941. Thereafter she secured a decree of divorce from her husband on January 6, 1948. Bruce Dome and his twin sister Wanda Dome, who have been referred to in these findings

as the twins, were born in Stoneham, in the County of Middlesex, at The New England Sanatarium and Hospital on September 30, 1951. In addition to the twins here in issue this mother gave birth to another child on September 26, 1953.

Some difficulty has been experienced in attempting to determine the manner in which the twins came to the home of the petitioners, and the testimony of the petitioners in this matter was conflicting and wholly unreliable. The twins were, however, brought to the home of the petitioners at 101 Ocean Street, Lynn, on October 13, 1951, and have been in the household of the petitioners up to the present time. Before securing possession of the twins the petitioners consulted with an attorney who informed them of the law relative to religion in adoptions but they, nevertheless decided to take a chance that the petitions would be allowed. A few weeks after the petitioners secured the twins a representative of the Department of Public Welfare called upon the petitioners and told the petitioners of that section of the law having to do with the religious faith of children but the petitioners insisted that "regardless of the law" they would take a chance on the adoptions. The mother of the children has never seen the petitioners or spoken to them, has stated that she knew that the prospective adoptive parents are Jewish and that she is satisfied that the twins be raised in the Jewish faith. She is a Catholic, as is the natural father of the twins.

From the time the twins were secured by the petitioners up to the present time they have been given constant care and attention by the petitioners who have treated

the twins as their own children, and intend to care for them and educate them to the best of their ability.

As stated above, the mother and the natural father of the twins are Catholics. The petitioners are of the Jewish faith, and express the intention of bringing the twins up in the Jewish faith.

The male petitioner and his wife are of dark complexion and have dark hair while the twins are described as blondes with large blue eyes and flaxen hair.

There was testimony, and the Court finds that there are in and about the City of Lynn many Catholic couples of fine family life and excellent reputation who have filed applications with the Catholic Charities Bureau for the purpose of adopting Catholic children of the type of the twins, and are able to provide the twins with a material status equivalent to or better than that of the petitioners, and with whom the twins could be placed immediately.

I, therefore, find that it would not be for the best interests of the twins to decree adoptions in these cases.

John V. Phelan
Judge of Probate Court.

Filed November 3, 1953

Appendix

B. OPINION OF THE SUPREME JUDICIAL COURT

ROUBEN GOLDMAN & another, petitioners
(and a companion case[1]).

Essex. April 5, 6, 1954.—September 27, 1954.

Present:
QUA, C. J., RONAN, WILKINS, SPALDING, & COUNIHAN, JJ.

Adoption. Probate Court, Appeal, Adoption proceeding, Findings by judge. *Evidence,* Relevancy and materiality. *Parent and Child. Infant. Constitutional Law,* Religion, Adoption.

Cases heard by *Phelan,* J., in the Probate Court for the county of Essex.

QUA, C.J. The petitioners, husband and wife, seek to adopt twin children, boy and girl, born at a hospital September 30, 1951. The case was heard upon oral evidence and also upon reports filed by the department of public welfare, in accordance with G. L. (Ter. Ed.) c. 210, §5A, as appearing in St. 1950, c. 737, §2, and reports of a guardian ad litem, all of which reports were received without objection as evidence at the hearing. The judge made findings of fact, concluding that it would not be for the best interests of the twins to decree adoptions in these cases, and dismissed the petitions. The petitioners appeal. The evidence is reported.

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[1]A separate petition was filed for each of the twins.

Appendix

General Laws (Ter. Ed.) c. 210, §5B, inserted by St. 1950, c. 737, §3, is as follows: "In making orders for adoption, the judge when practicable must give custody only to persons of the same religious faith as that of the child. In the event that there is a dispute as to the religion of said child, its religion shall be deemed to be that of its mother. If the court, with due regard for the religion of the child, shall nevertheless grant the petition for adoption of a child proffered by a person or persons of a religious faith or persuasion other than that of the child, the court shall state the facts which impelled it to make such a disposition and such statement shall be made part of the minutes of the proceedings."

The petitioners obtained the children when they were about two weeks old from the hospital where they were born and have had them ever since. All of the evidence bearing on the ability of the petitioners to care for the twins, including that contained in the reports mentioned above, tended to show that the petitioners have a good home and sufficient means, are fond of the twins, and are giving them adequate care. The judge found that the petitioners are well equipped financially and physically to bring up the twins, and that they have treated them as their own children and intend to care for them and educate them to the best of their ability. The judge further found that the mother and "the natural father" of the twins are Catholics. There was ample evidence to support this finding. The mother did not cease to be a Catholic, even if she failed to live up to the ideals of her religion. If that were the test of belonging to a religious faith it is feared that

few could qualify for any faith. The petitioners are of the Jewish faith and intend to bring up the twins in that faith. The mother has consented in writing on both petitions to the adoptions prayed for. She has never seen or spoken to the petitioners, but she has stated that she knew they were Jewish and was satisfied that the twins should be raised in the Jewish faith. The petitioners were informed by their attorney before they took the twins of the law relative to religion in adoptions, but they decided to take a chance that the petitions would be allowed. The petitioners have dark complexions and dark hair. The twins are blond, with large blue eyes and flaxen hair.

The judge further found that "Some difficulty has been experienced in attempting to determine the manner in which the twins came to the home of the petitioners, and the testimony of the petitioners in this matter was conflicting and wholly unreliable." We cannot say there was no support for this finding. We have not seen the witnesses. Goldman testified at one point that he did not like to get the "mutual friends," through whom he and his wife heard of the twins, "involved in any legal situation" by revealing their names. A similar reticence on the part of the mother of the twins appears from reports of the department. The judge may well have doubted whether all the circumstances had been revealed and whether the requirements of law, particularly of G. L. (Ter. Ed.) c. 210, §11A, as appearing in St. 1950, c. 737, §6, had been fully observed. See now G. L. (Ter. Ed.) c. 119, §40A, inserted by St. 1952, c. 596.

The judge also found that "there are in and about the city of Lynn [which is near the residence of the petitioners]

many Catholic couples of fine family life and excellent reputation who have filed applications with the Catholic Charities Bureau for the purpose of adopting Catholic children of the type of the twins, and are able to provide the twins with a material status equivalent to or better than that of the petitioners, and with whom the twins could be placed immediately." This finding was in effect a finding that it was "practicable," within the meaning of that word in § 5B, to "give custody only to persons" of the Catholic faith. The finding rests upon detailed evidence from persons connected with Catholic charities as to many applications to adopt Catholic children by Catholic couples who had been investigated and found in good financial condition with good homes, "who are ready and willing to adopt these two children." It is true that objection was made to the oral part of the evidence which follows that just quoted, and that it would have been desirable if more definite proof could have been had that suitable Catholic persons had actually seen these particular children and stood ready to adopt both of them at one time. Such more definite proof, however, would probably in the circumstances have been hard to obtain. The objection to the evidence was general "to this entire line." We think it was directed against the pertinency of evidence of the general character involved in the line of inquiry rather than to the technical competency of each separate question and answer. See *Holbrook* v. *Jackson,* 7 Cush. 136, 154; *Bryer* v. *P. S. Thorsen Co. of Massachusetts,* 327 Mass. 684, 686-687; *Ovington* v. *Racine,* 330 Mass. 333, 337.[1]

[1] Mass. Adv. Sh. (1953) 601, 604.

Moreover, the state of mind or intent of a person, whenever material, may be shown by his declarations out of court. *Commonwealth* v. *Trefethen,* 157 Mass. 180, 185-195. *Viles* v. *Waltham,* 157 Mass. 542. *Inness* v. *Boston, Revere Beach, & Lynn Railroad,* 168 Mass. 433. *Aldrich* v. *Aldrich,* 215 Mass. 164, 170. *Partridge* v. *United Elastic Corp.,* 288 Mass. 138, 141. Wigmore on Evidence (3d ed.) §§1725, 1726. The "line" of evidence was competent, and we cannot say that the evidence itself fell so far short as to fail to support the finding of the judge last above quoted. We cannot say that a finding that it was practicable to give custody to persons of the religious faith of the twins cannot stand because the mother might refuse her consent required by G. L. (Ter. Ed.) c. 210, §2, as appearing in St. 1950, c. 737, §1, to adoption by any persons other than the petitioners. There was no evidence that she would take that position, and the judge was not obliged to assume that she would.

Some argument is advanced that there was here no "dispute" as to the religion of the twins and from that it is apparently sought to draw a conclusion that the religion of the mother should be disregarded. It would seem that there is a "dispute," since the guardian ad litem, as the representative of the children, contends that their religion is Catholic, while the petitioners at one stage in their argument seem to contend that it is not. But even if there is no "dispute" we think that for purposes of §5B these twins, too young to choose a religion for themselves, must be deemed to belong to the Catholic faith for reasons hereinafter stated.

Appendix

It is argued that the result of the present cases is inconsistent with that in *Gally, petitioner,* 329 Mass. 143. We do not agree. That case, as we were there careful to point out, came to us entirely upon documentary evidence. We were in as favorable a position to find facts as was the judge of probate. 329 Mass. at page 145. The cases now before us were heard by the judge largely upon oral evidence. He saw and heard the petitioners face to face. The elements that entered into the final decision against adoption were elements of fact. They embraced all relevant circumstances. The burden of proof was upon the petitioners. The rule is that we can overturn findings of fact upon oral evidence only if they are plainly wrong. We do not feel that we can disturb the judge's finding against the petitioners.

It is contended that §5B is unconstitutional as a law "respecting an establishment of religion, or prohibiting the free exercise thereof," contrary to the First Amendment to the Constitution of the United States, and as in some manner contrary to art. 2 of our Declaration of Rights and to art. 11 and art. 46, §1, of the Amendments to the Constitution of this Commonwealth. With this we cannot agree. All religions are treated alike. There is no "subordination" of one sect to another. No burden is placed upon anyone for maintenance of any religion. No exercise of religion is required, prevented, or hampered. It is argued that there is interference with the mother's right to determine the religion of her offspring, and that in these cases she has determined it shall be Jewish. Passing the point that so far as concerns religion she seems to

have consented rather than commanded and seems to have been "interested only that the babies were in a good home," there is clearly no interference with any wish of hers as long as she retains her status as a parent. It is only on the assumption that she is to lose that status that §5B becomes operative. The moment an adoption is completed all control by the mother comes to an end. See c. 210, §6, as most recently amended by St. 1950, c. 737, §4.

We do not attempt to discuss the philosophy underlying the concept that a child too young to understand any religion, even imperfectly, nevertheless may have a religion. We have no doubt that the statute was intended to apply to such children, and that in such instances the words "religious faith . . . of the child" mean the religious faith of the parents, or in case of "dispute" the faith of the mother. There is nothing new in this idea. In the leading case of *Purinton* v. *Jamrock,* 195 Mass. 187, at page 200, it was said long before the enactment of the statute that the parents' religion was prima facie the infant's religion. It was also there decided that weight should be given to that religion in matters of adoption. The present statute merely ascribes somewhat more weight than was before ascribed to the religion of the natural parents in the matter of making a decree for adoption. *Gally, petitioner,* 329 Mass. 143, 147-149. If neither parent had any religion we suppose the statute would have no application. It has no effect after the adoption is completed. The principle that children should, in general, be adopted within the faith of their natural parents has received widespread approval, as is attested not only by such decisions as *Purinton* v. *Jamrock*

but also by the fact that most of the States now have statutes more or less similar to §5B. See 54 Colum. L. Rev. 376 (March, 1954). We are not prepared to hold either such decisions or the statute unconstitutional. See *Zorach* v. *Clauson*, 343 U. S. 306.

Decrees affirmed.

Appendix

C. RESCRIPT

COMMONWEALTH OF MASSACHUSETTS.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH,
AT BOSTON, September 27 1954.

IN THE CASE OF

ROUBEN GOLDMAN & another, petitioners
(and a companion case)

pending in the Probate Court for the County of Essex

ORDERED, that the register of probate and insolvency in said county make the following entry under each of said cases in the docket of said court; viz.,—

Decree affirmed.

BY THE COURT,
FREDERICK L. QUINLAN, CLERK.

September 27, 1954.

Brief statement of the grounds and reasons of the decision:
See opinion on file.

A true copy,
Attest:

December 15, 1954

[SEAL]

FREDERICK L. QUINLAN
CLERK.

Appendix

D. CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Constitutional Provisions

We rely upon the following constitutional provisions:

1. United States Constitution, First Amendment:

   "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

2. United States Constitution, Fourteenth Amendment, Section 1:

   ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statute

Section 5B of chapter 210 of the Massachusetts General Laws (Tercentenary Edition), added by section 3 of chapter 737 of the Acts of 1950, provides:

> "SECTION 5B. In making orders for adoption, the judge when practicable must give custody only to persons of the same religious faith as that of the child. In the event that there is a dispute as to the religion of said child, its religion shall be deemed that of its mother.
>
> "If the court, with due regard for the religion of the child, shall nevertheless grant the petition for adoption of a child proffered by a person or persons of a religious faith or persuasion other than that of the child, the court shall state the facts which impelled it to make such a disposition and such statement shall be made part of the minutes of the proceedings."